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Appeal from Circuit Court, Mecklenburg County.

Suit by S. T. Moore, in his own right, as executor of the estate of E. A. Moore, deceased, against one Kernachan and others. From a decree, plaintiff appeals. Reversed and remanded.

Chas. T. Reekes, of Boydton, *L. Berkley Cox,* of Norfolk, and *S. S. P. Patteson,* of Richmond, for appellants.

Hiram Wall, of South Hill, and *Irby Turnbull,* of Boydton, for appellees.

ALTAVISTA COTTON MILLS, Inc. *v.* LANE.

June 15, 1922.

[112 S. E. 637.]

1. Appeal and Error (§ 882 (12)*)—Defendant, Having Raised Issue of Implied Contract, Could Not Complain of Plaintiff's Instruction Thereon.—In action for services, the defendant, having raised the issue of whether there was an implied contract by its answer and by instruction given by the court in its request, could not complain of plaintiff's instruction on such issue on the ground that plaintiff did not sue upon an implied contract.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

2. Trial (§ 251 (9)*)—Refusal to Instruct that Plaintiff Could Not Recover for Certain Losses Not Constituting an Issue in the Case Held Not Error.—In action for services rendered in financing the corporation, in which the jury were properly instructed as to the proper measure of damages, refusal to ins ruct that plaintiff could not recover losses suffered through his connection with transactions of other concerns where recovery of such losses was not an issue in the case held not error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 604.]

3. Appeal and Error (§ 882 (12)*)—Amendment of Defendant's Instruction Containing Same Proposition as Another of Defendant's Instruction Granted Held Not Reversible Error.—Amendment of defendant's instruction containing practically the same proposition as was embodied in one of defendant's instructions which was granted by the court held not reversible error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 604.]

4. Appeal and Error (§ 1064 (1)*)—Instruction Allowing Plaintiff Compensation for Certain Services Held Harmless in View of Evidence as to Rendition of Services.—In action for services rendered in financing defendant corporation, instruction authorizing jury to allow plaintiff for services which materially contributed to placing the busit ness on a sound financial basis, if error, was harmless in view of the corporation's admission that the business was placed on a sound finan-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

cial basis, and evidence from which it could be inferred that it was placed on a sound financial basis as the result of plaintiff's services.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

5. Evidence (§ 77 (1)*)—Failure to Examine Available Witness Possessing Peculiar Knowledge Concerning Facts Creates Inference that Testimony Would Be Unfavorable.—A party's failure to call an available witness possessing peculiar knowledge concerning facts essential to a party's cause, or to examine such witness as to such facts and reliance upon evidence of witnesses less familiar with the matter, creates inference that testimony of uninterrogated witness would not sustain the contention of the party.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 338.]

6. Corporations (§ 298 (7)*)—Entry of Contract of Employment on Directors' Minutes Not Essential to Recovery Thereon.—In action against a corporation for services in financing the corporation, the mere fact that the plaintiff was responsible for the failure to enter his contract on the minutes of the directors did not preclude him from recovering for services; there being no legal necessity for making such record.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 320.]

7. Corporations (§ 298 (7)*)—Acts of Directors Valid without Record of Votes in Absence of Requirement by Statute.—It is a corporation's duty to keep a record of the meetings of its directors showing the date of the meeting and who were present, but it is not essential to the validity or binding effect of the acts done or authority given by the board that its votes or decisions be recorded, unless recordation is required by statute, charter, or by-laws.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 542.]

8. Evidence (§ 157 (2)*)—Parol Evidence Admissible to Show What Was Resolved or Done by Directors of Corporation.—If no record is kept of the proceedings of the board of directors or trustees of a corporation, parol evidence is admissible to show what was resolved or done and by what votes.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 583.]

9. Corporations (§ 452*)—No Formal Requirements in Execution of Contracts Necessary in Absence of Statute.—In the absence of charter or statutory limitations, the only essential difference between the power of the corporation and of an individual to contract rests upon the fact that the corporation must act through its officers or agents, and a corporation, in the absence of statutory or charter provisions, need observe only such formal requirements in the execution of its contracts as are binding on an individual under similar circumstances.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 564.]

10. Corporations (§ 298 (7)*)—Assent to Contract Need Not Be Shown by Minutes of Directors' Meeting.—In an action on a corporation's contract, it is necessary to show the assent of the corporation,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

but, in the absence of statutory requirement, such assent need not be shown by a formal vote nor by entry in the minutes of a directors' meeting.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 564.]

11. Corporations (§ 426 (10)*)—Ratifies Contract by Accepting Benefits.—A corporation, by accepting the benefits of a contract, ratifies the contract and waives any informalities in its execution.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 567.]

12. Contracts (§ 108 (2)*)—Contract to Pay Reasonable Amount for Services in Financing Corporation Not against Public Policy.—The corporation's contract to pay a reasonable amount for services rendered in financing the corporation is not against public policy.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 373.]

13. Corporations (§ 519 (3)*)—Evidence Held to Prove Rendition of Services in Financing Corporation.—In an action against a corporation for services rendered in financing the corporation, evidence held to prove rendition of services.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 583.]

Error to Circuit Court, Campbell County.

Suit by H. L. Lane against the Altavista Cotton Mills, Incorporated. Judgment for plaintiff, and defendant brings error Affirmed in part, and reversed in part.

Volney E. Howard and *Wilson & Manson,* all of Lynchburg, for plaintiff in error.

H. L. Hale, Harrison & Long, and *Caskie & Caskie,* all of Lynchburg, for defendant in error.

POWELL *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 657.]

1. Homicide (§ 319*)—Refusal to Set Aside Verdict because of Newly Discovered Evidence Held Error.—In prosecution for murder, in which the state relied on the evidence of the wife and nephew of deceased, where newly dscovered evidence was to the effect that deceased's wife had committed perjury as to material facts, relating to provocation justifying the killing, in view of the fact that testimony of the nephew of deceased was to the same effect as that of deceased's wife, and was subject to influence of the wife of deceased, refusal to grant a new trial was error.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 474.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.